

BLD-393

September 27, 2007

UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

C.A. No. **07-3780**

IN RE: MICHAEL EVANS,

Petitioner

Present: MCKEE, FUENTES AND VAN ANTWERPEN, CIRCUIT JUDGES

Submitted is Petitioner's application pursuant to 28 U.S.C. § 2244 to file a second or successive motion under 28 U.S.C. § 2254.

in the above-captioned case.

Respectfully,

Clerk

MMW/EAW/zm/par

ORDER

The foregoing application for leave to file a second or successive § 2254 petition pursuant to 28 U.S.C. § 2244 is denied. Petitioner has not made a prima facie showing that the claims in his proposed § 2254 petition rest on "a new rule of constitutional law, made retroactive to cases on collateral review by the Supreme Court, that was previously unavailable." See § 2244(b)(2). Petitioner also has not shown that the factual predicate for his new ineffective assistance of counsel claim "could not have been discovered previously through the exercise of due diligence," and that the facts underlying his claim, "if proven and viewed in the light of the evidence as a whole, would be sufficient to establish by clear and convincing evidence that, but for constitutional error, no reasonable fact-finder would have found [him] guilty of the underlying offense." 28 U.S.C. § 2244(b)(2).



A True Copy

Marcia M. Waldron

Marcia M. Waldron, Clerk

By the Court,

/s/ Julio M. Fuentes

Circuit Judge

Dated: October 19, 2007

par/cc: Mr. M. E.

DA Alghny